IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22298 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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BHURALAL MEGHJIBHAI PARMAR - Petitioner(s)

Versus

STATE OF GUJRAT & 1 - Respondent(s)

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Appearance :

MS FARHANA Y MANSURI for Petitioner(s) : 1,
MR SIRAJ GORI, ASSITANT GOVERNMENT PLEADER for Respondent(s) : 1,
MR PV HATHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/01/2006

ORAL JUDGMENT

1. In the present petition the petitioner has challenged his removal from the post of Sarpanch of Village Jam-Vanthli, Tal. & District – Jamnagar.

2. The petitioner was elected as Sarpanch of the said village. For certain allegations, show cause notice was issued against him on 13-01-2004. Subsequently, after the order passed by the Additional Development Commissioner, it appears that the fresh notice was issued on 13-12-2004, as to, why the petitioner should not be removed as a Sarpanch in exercise of powers under Section 57(1) of the Gujarat Panchayat Act, 1993 (hereinafter referred to as “the Act” for short). The petitioner filed his reply and denied the charges. The District Development however, by his order dated 10-08-2005 ordered removal of the petitioner as Sarpanch. The petitioner filed appeal against the said order before the Additional Development Commissioner. The said appeal was rejected by impugned order dated 21-10-2005. The petitioner has therefore, preferred the present petition.

3. Upon perusal of the orders passed by the District Development Officer and Additional Development Commissioner, it can be seen that there were three main charges against the petitioner, which were held to be proved. Firstly, it was suggested that an amount of Rs. 10,000/- (Rupees Ten thousand only) was withdrawn from the account of the Panchayat as an advance on 10-11-2003.

Out of the said amount, Rs. 6227 (Rupees Six Thousand Two Hundred Twenty Seven only) was retained by the petitioner. Second charge was that, an amount of Rs. 375/- (Rupees Three Hundred Seventy Five only) was paid by way of labour charges, but it is not indicated in the voucher, that the said amount is actually paid to the labourers. It was therefore, held that there was misappropriation by the petitioner. Thirdly, it was alleged that the petitioner had shown to have spent some amount towards light refreshments and rickshaw fares.

3.2 With respect to first charge both the authorities observed that after withdrawing Rs. 10,000/- (Rupees Ten Thousand only) an amount of Rs. 6227/- (Rupees Six Thousand Two Hundred and Twenty Seven only) was retained by the petitioner. The petitioner had pointed out to the authorities that the said amount was redeposited on 05-12-2003. The period between the withdrawal from the Bank account and redeposit of the surplus amount is too short to permit the authorities to draw the conclusion of an attempt to misappropriate the amount or to hold that there was temporary misappropriation by the petitioner, especially without any other evidence in this regard. Admittedly, the amount

was deposited in the Bank account of Panchayat long before the issuance of the show cause notice. In view of no other material suggesting anything on the part of the petitioner to utilise the amount for his personal need and considering the short span of time within which he had deposited the amount back into the Panchayat account that too before he was called upon to do so by either authorities would convince me that the conclusion of the authorities that the petitioner had committed financial irregularities is not well founded.

3.3 With respect to the charge that certain procedural defects were noticed in payment of Rs. 375/- (Rupees Three Hundred Seventy Five only) towards labour charge, it may be noted that for such procedural lapses, removal of the Sarpanch would not be justified. I am unable to concur with the observations made by the authorities that there was temporary misappropriation of the said amount. There is nothing on the record to establish the said conclusion.

3.4 With respect to the charge that the petitioner debited certain miscellaneous expenses towards light refreshment and rickshaw fares, there is nothing on the

record to suggest that such expenses were not allowable. Considering the insignificant amount which the petitioner had debited as miscellaneous expenses would convince me that it cannot be a ground on which the elected Sarpanch of Gram Panchayat can be removed.

4. In the result, both the authorities have committed an error in passing the order of removal. The petitioner was elected as Sarpanch. His removal can be based on misconduct and not merely on some charges of minor procedural irregularities, without any basis of dishonest intention on his part.

5. The petition is allowed. The order passed by the Additional Development Commissioner (Annexure – A) upholding the order of District Development Officer is quashed. The petition is disposed of accordingly. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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